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7 **UNITED STATES DISTRICT COURT**  
8 **FOR THE NORTHERN DISTRICT OF CALIFORNIA**  
9 **SAN JOSE DIVISION**

10 AMERICAN FEDERATION OF  
TEACHERS, *et al.*,

11 Plaintiffs,

12 v.

13 MIGUEL CARDONA, *et al.*,

14 Defendants.  
15  
16  
17

Case No. 5:20-cv-455-EJD

**JOINT STIPULATION TO STAY  
DEFENDANTS' DEADLINES TO FILE AN  
ANSWER AND ADMINISTRATIVE RECORD  
PENDING RESOLUTION OF DEFENDANTS'  
ANTICIPATED MOTION TO REMAND ;  
PROPOSED ORDER**

18 Plaintiffs American Federation of Teachers, California Federation of Teachers, Isai  
19 Baltezar, and Julie Cho, and Defendants Miguel Cardona, in his official capacity as Secretary of  
20 Education, and the U.S. Department of Education ("Department"), through their respective  
21 undersigned counsel, submit this Joint Stipulation to request that, in light of Defendants' intent to  
22 seek remand of this action to the Department, Defendants' current October 29, 2021 deadline to  
23 file an Answer and Administrative Record be stayed until 30 days after the Court resolves  
24 Defendants' motion to remand. The parties state the following in support of their stipulated  
25 request:  
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1           1.       On January 22, 2020, Plaintiffs filed a Complaint for Declaratory and Injunctive  
2 Relief, bringing eleven claims under the Administrative Procedure Act (“APA”), 5 U.S.C.  
3 §§ 701-706, in a challenge to a Final Rule promulgated by the Department. *See* ECF No. 1.

4           2.       On March 27, 2020, the parties filed a stipulated request to set a briefing schedule  
5 in connection with Defendants’ motion to dismiss. *See* ECF No. 22. As part of this request, the  
6 parties stipulated and proposed that Defendants’ deadlines under Local Civil Rule 16-5 be  
7 extended up to and including 30 days after the disposition of Defendants’ motion.

8           3.       Following briefing and a hearing on Defendants’ motion, the Court issued an  
9 Order Granting in Part and Denying in Part Defendants’ Motions to Dismiss on September 3,  
10 2021 [ECF No. 33].

11           4.       The parties filed a Case Management Statement on September 21, 2020. *See* ECF  
12 No. 35. Defendants filed a Motion for Partial Reconsideration of the Court’s September 3, 2021,  
13 ruling on October 1, 2020. *See* ECF No. 38.

14           5.       Following briefing on Defendants’ motion, the Court denied reconsideration in  
15 relevant part in an Order issued on September 29, 2021. *See* ECF No. 44.

16           6.       In light of the Court’s ruling, Defendants’ deadline to file an Answer and  
17 Administrative Record in accord with Local Civil Rule 16-5 is currently October 29, 2021.

18           7.       Defendants state that they anticipate filing a motion for voluntary remand of this  
19 action to the agency in light of the Department’s initiation of new rulemaking processes on the  
20 same topics addressed by the Final Rule at issue in this action. Defendants plan to argue that a  
21 remand would conserve judicial resources as well as the resources of the parties. Defendants also  
22 plan to propose that the Court remand the action without vacating the Final Rule due to the  
23 disruptive impacts such a vacatur would have on the Department’s resources and activities as  
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1 well as the Department's inability to effectively implement the rule that preceded the Final Rule,  
 2 which would go back into effect if the Final Rule were vacated.

3 8. Counsel for Defendants and counsel for Plaintiffs have conferred regarding  
 4 Defendants' proposal to remand this action without vacatur.

5 9. Plaintiffs have taken Defendant's position under consideration but have not yet  
 6 finalized a decision regarding their position on Defendants' proposed remand.  
 7

8 10. Defendants plan to file a motion to remand as soon as today, or in any case no  
 9 later than October 29, 2021. The parties anticipate that, consistent with Local Rule 7-3 and  
 10 absent an additional motion, Plaintiffs opposition or statement of nonopposition will be filed and  
 11 served within 14 days of Defendants' motion, and, if applicable, Defendants' reply will be filed  
 12 and served 7 days thereafter.  
 13

14 11. The parties have agreed and respectfully submit this stipulated request that, in  
 15 light of Defendants' anticipated motion to remand, Defendants' deadline to file an Answer and  
 16 an Administrative Record should be stayed until 30 days after the Court rules on the motion to  
 17 remand, if the Court denies the motion.  
 18

19 Dated: October 27, 2021

Respectfully submitted,

20 BRIAN M. BOYNTON  
 21 Acting Assistant Attorney General  
 22 MARCIA BERMAN  
 Assistant Director, Federal Programs Branch

23 /s/ Kathryn L. Wyer

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1 /s/ Daniel A. Zibel

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23 \*Admitted *Pro Hac Vice*

24 **PROOF OF CONCURRENCE**

25 Pursuant to Civil Local Rule 5-1(i)(3), Defendants attest that all Plaintiffs, through their  
26 counsel, have concurred in the filing of this Stipulated Request.

27 Executed on October 27, 2021, in Washington, D.C.

28 /s/ Kathryn L. Wyer

KATHRYN L. WYER

**ORDER RE BRIEFING SCHEDULE AND STAY OF DEFENDANTS' DEADLINES**

The above JOINT STIPULATION is approved. Defendants shall file their motion to remand on or before October 29, 2021. Defendants' deadline to file an Answer and Administrative Record is STAYED pending the Court's ruling on Defendants' motion to remand. If the Court denies Defendants' motion, Defendants' Answer and Administrative Record will be due 30 days after the Court's Order.

**IT IS SO ORDERED.**

Dated: \_\_\_\_\_

\_\_\_\_\_  
EDWARD J. DAVILA  
United States District Judge